
CITY OF NEWTON, MASSACHUSETTS

CONSERVATION COMMISSION

CONSERVATION COMMISSION

MEETING MINUTES

February 24th, 2011

Beginning at 7:30 p.m.

City Hall, Room 209



Setti D. Warren
Mayor

Candace Havens
Director
Planning & Development
Department

Anne Phelps
Sr. Environmental Planner

Commissioners

Ira Wallach, Chair
Susan Lunin, Vice Chair
Judy Hepburn, Secretary
Norm Richardson
Roger Matthews
Dan Green
Doug Dickson
Jane Sender, Alternate

Meeting called to order at 7:37 p.m.

MEMBERS PRESENT: I. Wallach, (Chair), S. Lunin, J. Hepburn, D. Green, and J. Sender (Alternate)

MEMBERS ABSENT: D. Dickson, N. Richardson, R. Matthews

MEMBERS OF THE PUBLIC: Nathan Robbins, and see attached sign-in sheet

1 Nonantum Rd. NOI- Continuation of DCR proposal to repair & replace 3 culverts between Maple St. and the Daly Rink in conjunction with the re-development of Nonantum Road in the 200 ft riverfront to the Charles and the 100 ft buffer to bank.

Report: This qualifies as a limited project under 10.53(3) and 10.53(3)(k)), and the commission may issue an OOC, even though the project may not protect the interests under the Act. Two pipes, one belonging to the City of Newton, near Maple St. would be replaced with a pipe just above the bank and rip-rap at the outfall to prevent erosion. F. Nichols and Env. Planner have discussed options for the pipe adjacent to the Daly Rink. DCR thinks the pipe is broken (in several places). If so, it may be contributing to the area that has been treated as a **bordering vegetated wetland** at the site. The area has standing water, and lies in the FEMA floodplain, but intervening areas appear too high for it to be the result of flooding from the river. If it is groundwater, then we think the area is too small to be jurisdictional as ILSF (see 10.57(1), 10.57(1)(b), and 10.57(2)(b)1. and 3.). Planner thinks the area could be used for a detention pond (with a broken pipe, it may have been functioning as a detention pond for some time), with an overflow to the bank of the Charles. This treatment would greatly improve water quality by bacterial breakdown and vegetational uptake of nitrogen and phosphorus compounds, in addition to removing sediment. The impact to the riverfront, when completed, should be no greater than the current condition (see 10.58(4)(c)3) under Evaluation of Alternatives, and would be better than a pipe because it would virtually eliminate the possibility of erosion on the bank. The question remains whether this would be a *substantially equivalent economic* alternative. Applicant has presented no data on this (no alternatives analysis has been presented), but Planner would recommend it.

Meeting: Rob Lowell, P.E., DCR, and Siona Patisteas, AECOM, described an alternate method for treating the storm water. DCR proposes to repair the pipe (pipe 1, by the Daly Rink) and place the outfall just inland of the top of bank, and use a "plunge pool" to mitigate the force of the outfall to prevent erosion. R. Lowell said they could install some appropriate plantings to filter the sediment and provide some uptake of nutrients from the water prior to its entry to the Charles R. DCR land has not been used in the past for storm water structures, and they do not want to make a detention basin. The plunge basin would need some maintenance, but would also tend to be self-cleaning. **Motion by D. Green to approve an OOC to leave the depression near the Daly Rink at its same elevation, and instead create a plunge pool at the pipe outfall, with plantings to be approved jointly by Sr. Planner and DCR, and to apply the standard conditions. Second by S. Lunin. Motion: All in favor. Motion passed.**

1000 Commonwealth Ave.
Newton, MA 02459
T 617/796-1120
F 617/796-1134

483 Dedham St. Charles River Country Club NOI – Proposal is to re-grade the 15th Fairway to re-direct run-off, partly in riverfront and partly in buffer zone. A temporary access road is proposed through bordering vegetated wetland.

Report: No new information provided for this proposal. My prior recommendations are unchanged. Reports submitted at last meeting regarding 4 prior Orders that have not been closed out are in packet. Planner still recommends materials should be submitted for COCs on old Orders prior to issuance of new Order.

Meeting: Applicant has asked to continue the hearing until the March 24th meeting, both to allow time for snow to melt for a site visit, and to provide more time to submit requests for Certificates of Compliance on four (4) outstanding OOCs.

Walnut/Wales St. Bridge NOI-DPW to re-pave, widen sidewalk and install guardrails.

Report: Site visit was conducted with Frank Nichols, Newton Engineering and the agent from Wellesley several months ago. The work proposed is partly maintenance and is “grandfathered or exempted” under 10.58(6)(a). However, part of the work is an increase in sidewalk width and grading (on the Newton side=880 sf) in riverfront. This latter work is enlargement and redevelopment (10.58(5)) because it is an expansion of an existing structure (sidewalk and associated grading) and should meet the conditions under 10.58(5)(a) through (k), if they apply, and no mitigation has been offered, other than erosion and sediment control and restoration of disturbed area with loam and seed. If the commission believes this area fails to protect any of the interests under the Act (and the proponent has offered no evidence to this effect), the commission must so vote. Else, Planner recommends mitigation should be offered to consist of woody native plantings near the work area. A containment structure is necessary for work on the superstructure, and approval of the structure and its efficacy by the Env. Planner should be a special condition. Filter sock rather than hay bales should be used, and no stockpiling in riverfront or concrete washout in riverfront without **prior approval from Env. Planner.**

Meeting: Phil Paradis, BETA Group, Inc. presented the proposal. Newton DPW and the Town of Wellesley will share the cost of the work. The bridge needs safety upgrades, including raising the height of the parapet for the section over the water. P. Paradis said that sidewalks were not being widened, but do need to be “re-set” at the proper grade. The commission questioned whether the applicant could do some plantings as mitigation. Motion by D. Green to approve an OOC with the following special conditions, **1) Plans for a containment structure underneath the bridge shall be provided and are subject to approval by the Sr. Environmental Planner and/or the Commission prior to the start of work, 2) no part of the riverfront area in Newton shall be used as a staging area, including concrete wash-out area, without prior approval by the Env. Planner, and 3) mitigation plantings of woody vegetation (from list provided by Sr. Env. Planner) of three shrubs for each side of the slope shall be completed. Second by S. Lunin. Vote: All in favor. Motion passed.**

11 Chesley Rd. NOI – After-the-fact for gravel driveway in the 30 ft floodzone (Watershed/Floodplain Ordinance Sec. 22-22), buffer to bank, and the 200 ft riverfront of Hammond Brook.

Report: Owner filed for an addition and to reconstruct the asphalt driveway. During the site inspection it was noted that a gravel driveway (with parked cars) was located partly in flood zone and entirely in riverfront, but not shown on the plan. Planner was asked to notify owner that he needs to file for this (second) driveway. Owner shows plan for compensatory flood storage. However, 3 cars were observed parked next to the bank of the stream, one with expired sticker. There is some concern about oil or other chemicals leaking adjacent to Hammond Brook. Plantings between the end of the gravel and the bank (stone-lined channel) might undermine the stone channel lining. Commission may 1) deny project because of potential negative impact, or 2) approve with compensatory storage and standard conditions.

Meeting: Craig Bernabei described the project and said that 1.6 cu yd would be removed next to the brook to compensate for the gravel. Discussion focused on the fact that the second, gravel driveway was constructed without a permit from conservation, and that it is in riverfront very near the perennial stream where oil or other liquids leaking from parked vehicles can contaminate the soil or water. C. Bernabei says none of the cars are derelict, but his daughter has left her care there and it did have a flat tire and an expired sticker. The view of the commission is that the owner should not end up better off than he would have been if he had come in and asked permission first. **Motion by J. Hepburn to issue an OOC with special conditions, 1) prior to issuance of a**



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Certificate of Compliance, owner shall supply a stamped surveyor's statement certifying the compensatory storage area created is equal to the amount of gravel fill in the flood zone; 2) Owner shall provide an area of mitigation planting equivalent to the square footage of the (entire) gravel driveway, since it is completely within the riverfront area, with plants from a list to be supplied by Env. Planner and to be maintained as an on-going condition in perpetuity. Second by D. Green. Vote: All in favor. Motion passed.

326 Fuller Av. Brae Burn Club Pond RDA- Proposal for hand-puling of milfoil.

Report: Plan submitted and information provided that this pond is man-made, lined, and not a natural part of the Cheesecake Brook watershed (the pond is fed from wells, I am told). A prior Order was issued to re-build a "wall" of the pond, bordered by rock, and the WPA jurisdictional area was indicated as buffer to bank of Cheesecake Brook (the work was completed and a COC issued). There IS a 30 ft flood zone from the centerline of Cheesecake Brook that may include an edge of the pond. Otherwise, the pond is NOT included in the Watershed/Floodplain Ordinance Sec. 22-22, and is thus not jurisdictional under either the WPA or Sec. 22-22. The location of the pond, in buffer to bank of Cheesecake Brook, does warrant review under a RDA. Planner has not been able to do a site visit yet, but hopes to do so prior to the meeting. If the commission agrees with the wetland determination of non-jurisdictional but in buffer to bank of Cheesecake, then Planner recommends a Negative Determination #3 (the work is in a buffer zone, but does not require a NOI, subject to the following conditions...). Conditions: no stockpiling of harvested milfoil within 50 ft of pond (and stream bank) all approach from opposite side of pond away from the brook.

Meeting: Robert Wheaton and Clayton Edwards, both of Lycott Environmental, described the project. About 10-30% of the water milfoil will remain, after hand-pulling, by divers, and approach to the pond will be from the side away from the brook. The work will likely be conducted during mid-May before the vegetation becomes too large, and it will be composted in an upland site. **Motion by S. Lunin to issue a negative determination #3 with conditions of 1) no stockpiling of removed vegetation in the buffer zone to Cheesecake Brook and 2) Approach to the pond shall only be made from the cart path on the opposite side of the pond from Cheesecake Brook. Second by D. Green. Vote: All in favor. Motion passed.**

Off-leash dog park at Norumbega- continued from December 2010;

Report: Candace Havens, Director of Planning and co-chair of the Off-leash Dog Park Committee, has requested that the commission continue the discussion of an off-leash dog park at Norumbega until a date unspecified (letter to chair in packet).

Meeting: The Chair asked whether anyone was present to talk about the off-leash proposal. J. Sender said that C. Havens, director of Planning has been meeting with the local residents. John Haywood, a resident who lives near the conservation area addressed the commission and said that it is the sentiment of the neighborhood to not make this area an "off-leash" park. The Chair asked about documents related to the acquisition of Norumbega; he said the commission should not allow any activities in the park that are excluded by the wording of either the initial application for funds, or by the deed. Env. Planner had looked for the deed, but been unable to find it, either in the Clerk's office or in the Assessor's storeroom. The Chair would like to see the original application for Community Development Block Grant funding that was obtained to purchase the property. Nathan Robbins, who has volunteered to work with the commission, said he would look at the on-line registry, and if he could not find it there, would go to the Registry of Deeds in Cambridge to try to find the deed. **Motion by S. Lunin to authorize I. Wallach, as Chair, to write to the appropriate authority (the Mayor) to request enforcement of the leash law on conservation land. Second by D. Green. Vote: All in favor. Motion passed.** I. Wallach said he will contact the Law Department to ask to find the initial application and terms for Norumbega. I. Wallach read the letter from C. Havens, requesting to postpone the discussion, and inferred that it meant the current proposal is being withdrawn, although she may come back in future with a revised proposal.

Violations(updates):

34 Farwell St. Violation – EO –OOC approved at last meeting.

The following **violations** were discovered during site visits acting on information passed to me via the Mayor's office that snow was being trucked into 25-27 Christina St and 320-322 Needham St, which properties have a connected parking lot. Following review of the state snow disposal advisory (in packet), the Planner issued EOs (see example in packet) for storing dirty snow (containing visible sand) in floodzone, on the bank of the Charles, and in a way that results in it going into the (frozen) river.

193 Oak St. Village Condos EO - issued for improper snow removal; needs ratification and follow-up;

Report: The violation consists of plowing dirty (contaminated with sand and/or chemicals) snow to the river's edge and/or beyond, storing snow in floodzone, and in riverfront closer than 50 ft to the bank. To date, the owners and employees of the condominium association have been very cooperative. Most of their snow removal work has consisted of snow-blowing, but in the northwest corner of the lot, snow was plowed into a high mound on the riverbank, and "dirty" snow was at or beyond the bank of the (frozen) surface of the river. An EO was issued on 2-3-2011, with a requirement to begin snow removal within 3 days and complete it within 10 days. Most of the snow has been removed from this area. It will be difficult to tell if there is substantial damage to bank vegetation until the snow melts. Recommend owner develop a snow disposal plan to be reviewed and approved by conservation for future snow disposal.

Meeting: The commission discussed problems with enforcement of the state policy. **Motion by S. Lunin to ratify the Enforcement Order, with the additional condition that a written snow disposal plan be submitted to the Env. Planner for approval, and a final site inspection made prior to hearing a request to lift the Enforcement Order. Second by D. Green. Vote: All in favor. Motion passed.**

**** See "Item added" under Announcements and General Business**

25-27 Christina St. EO –issued for improper snow removal; needs ratification and follow-up.

Report: This building is owned by Angela C. Maffeo Trust, c/o Colliers, Meredith & Grew. Colliers has been cooperative in trying to remove the snow, but most of the snow removed has been from the parking lot side and there are still several piles of dirty snow at the river's edge. There are two notable piles on either side of the trestle bridge across from the southern-most entry to the parking lot. Machinery cannot be used to remove this snow without severely damaging trees on and near the bank. My contact with Colliers tells me the snow has been removed to the "Needham Industrial Center" but I have no documentation, and have been unable to verify its destination. The snow remaining on the bank is starting to melt, a "dirty" plume can be seen in the water and a smell of oil detected on the pile of snow. The owner needs to provide verifiable documentation of where snow was taken after removal from the site, and that it was not re-deposited in a wetland or other resource area. Recommend owner develop a snow disposal plan to be reviewed and approved by conservation for future snow disposal.

Meeting: No one was present for the property owner/manager (Collier, Meredith & Grew, acting for the Maffeo Trust), and the Env. Planner said it is hard to tell how much damage to the bank there is until the snow is gone.

Motion by S. Lunin to ratify the Enforcement Order, with the additional condition(s) that a written snow disposal plan be submitted to the Env. Planner for approval, and that the Env. Planner should request a representative appear at the March 24th conservation meeting. Second by D. Green. Vote: All in favor. Motion passed.

320-322 Needham St. EO – issued for improper snow removal; needs ratification and follow-up.

Report: Bullfinch Group is the property manager, and my contact there has been hard to reach and I have received no information or documentation for where the snow has been taken. Considerable snow has been removed from near Needham Street, where snow was piled as much as 20 ft high. Snow removal along the bank and from the frozen surface of the river has also caused considerable damage to small trees along the bank and riverfront area. Recommend: 1) Owner should submit a bank restoration plan for the damage to bank vegetation. 2) Owner should develop a snow disposal plan to be reviewed and approved by conservation for future snow disposal.

Meeting: No representative was present for the property owner/manager (Bullfinch Group), and Env. Planner has not had good communication with Jim Cronin, the contact person who said he was responsible for snow removal.

Motion by S. Lunin to ratify the Enforcement Order, with the additional condition(s) that a written snow disposal plan be submitted to the Env. Planner for approval, a bank restoration plan be submitted for approval, and that the Env. Planner should request a representative appear at the March 24th conservation meeting. Second by D. Green. Vote: All in favor. Motion passed.



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LATE ADDITION:

2345 Commonwealth Ave. Marriott Hotel in violation of an on-going condition for snow disposal. **Report:** They are stockpiling it near/in the mitigation area and all along the grass from the front down to the back gate area and in between, contrary to the on-going condition requiring them to keep it out of the 200 ft riverfront to the Charles. **Meeting:** During a recent site visit, the Sr. Planner observed snow stored contrary to the on-going condition, including on top of mitigation plantings. Sand and salt are going into the catch basin in the back corner, and a large patch of dried salt was sitting on the pavement. The Planner has been in contact with the hotel manager and is trying to get the situation corrected. The commission did not issue an Enforcement Order at this time, as the manager is trying to cooperate and communicate regarding the issue.

Certificates of Compliance

62 Brierfield Rd.- excavator removed from flood zone- recommend approve COC;

Meeting: Motion by D. Green to approve issuance of a complete Certificate of Compliance. Vote: All in favor. Motion passed.

100 Boulder Rd – haybales need to be removed from flood zone;

Meeting: There is nothing new to discuss.

21-23 Cross St. –needs site visit & remove rose of Sharon from mitigation area;

Meeting: There is nothing new to discuss.

36 Hyde Av. – needs site visit;

Meeting: There is nothing new to discuss.

46 Kingswood Rd. – no final sit visit yet conducted;

Meeting: Sr. Env. Planner reported conducting a site visit, but she cannot tell for sure if the pile of composted water chestnuts have been removed. The mitigation plantings, with sweet pepperbush (*Clethra alnifolia*) substituted for spicebush, are in and appear fine, and the Env. Planner recommends approval.

Motion by S. Lunin to approve complete COC. Second by D. Green. Vote: All in favor. Motion passed.

77 Florence St.- needs as-built plan and site visit;

Meeting: Nothing to discuss.

33 Theodore Rd. – OOC recorded, now expired, but no work done as far as Planner can tell. No letter or plan submitted from surveyor, but site visit indicates structure is unchanged from original plan. Recommend commission approve COC checking box for “no work done.”

Meeting: Seth Stollman, the son of the owner and the realtor for the property, spoke to tell the commission his parents had recorded the Order and had their permits, but his father became ill and is now deceased, and his mother wishes to sell the house. Sr. Env. Planner noted the requirement for an “as-built” plan is a standard condition on the DEP form, but since no work was done, it is probably not necessary. **Motion by J. Hepburn to approve a COC for “no work commenced” and invalid Order. Second by S. Lunin. Vote: All in favor. Motion passed.**

Announcements & General Business:

****Chair – Wording should be added to future agendas** – Items may be called in any order, at the discretion of the Chairman

Confirmatory Order for 365-381 Elliot St. 239-555 (to correct file number)

Meeting: Env. Planner explained this Order had expired and the owner wished to extend. Planner advised the applicant that the Permit Extension Act of 2010 would automatically extend the Order, but noted that the file

number was incorrect and needed to be corrected. **Motion to approve the Confirmatory Order. Vote: All in favor. Motion passed.**

January 27th, 2011 Meeting Minutes for approval

Meeting: D. Green moved noted a miss-spelling and an omission (Bowin should be Bowen, and D. Green seconded the motion to approve the EO for Needham Street. **Motion by J. Hepburn to approve the minutes as amended. Second by S. Lunin. Vote: All in favor. Motion passed.**

Management Plan – do we have all items needed to complete it?

Meeting: D. Green will try to contact Norm Richardson to get a definitive list of the top 10 invasive plants and convert the list from pdf to Excel format.

Meeting adjourned at approximately 10:10 p.m.

Respectfully submitted,

Anne Phelps, Sr. Environmental Planner